

MARY ANN SMITH
Deputy Commissioner
MIRANDA LEKANDER
Assistant Chief Counsel
JOANNE ROSS (State Bar No. 202338)
Senior Counsel
ALEX M. CALERO (State Bar No. 238389)
Senior Counsel
Department of Business Oversight
1515 K Street, Suite 200
Sacramento, California 95814
Telephone: (916) 324-9687
Facsimile: (916) 445-6985

BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
OF THE STATE OF CALIFORNIA

In the Matter of:)	CRD NOS.: 136082, 2956667
)	
THE COMMISSIONER OF BUSINESS)	STATEMENT IN SUPPORT OF ORDER
OVERSIGHT,)	LEVYING ADMINISTRATIVE PENALTIES
)	PURSUANT TO CORPORATIONS CODE
)	SECTION 25252
Complainant,)	
v.)	
)	
JOSEPH FRANCIS DIEZ, doing business as)	
ALII CONSULTING,)	
)	
Respondent.)	

The Commissioner of Business Oversight ("Commissioner") of the Department of Business Oversight ("Department") alleges and charges as follows:

- From at least September 15, 2005 to the present, Joseph F. Diez, doing business as Alii Consulting ("Alii") (CRD No. 136082), was and is a licensed investment adviser. Diez is, and at all relevant times was, the owner and Senior Adviser of Alii. Diez has an investment adviser certificate (CRD No. 2956667) issued by the Department pursuant to Corporations Code section 25230.
- On or about May 17, 2010 and October 28, 2013, the Department commenced regulatory examinations of Diez and Alii. The examinations revealed that Diez and Alii violated the Corporate Securities Law of 1968 ("CSL") (Corp. Code § 25000 et seq.) and the rules and

regulations promulgated thereunder.

3. Corporations Code section 25238, provides, in relevant part:

No investment adviser licensed under this chapter . . . shall engage in investment advisory activities, or attempt to engage in investment advisory activities, in this state in contradiction of such rules as the commissioner may prescribe designed to promote fair, equitable and ethical principles.

4. California Code of Regulations, title 10, section 260.238, subdivisions (h) and (o), provide, in relevant part, that the following do not promote “fair, equitable or ethical principles” pursuant to Corporations Code section 25238:

(h) Misrepresenting to any advisory client . . . the nature of the advisory services being offered

(o) Making any untrue statement of a material fact or omitting a statement of material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading in the solicitation of advisory clients.

5. Corporations Code section 25241, provides, in relevant part:

Every . . . investment adviser licensed under Section 25230 shall make and keep accounts, correspondence, memorandums, papers, books, and other records and shall file financial and other reports as the commissioner by rule requires, subject to the limitations of . . . Section 222 of the Investment Advisers Act of 1940.

6. California Code of Regulations, title 10, section 260.241.3, subdivision (a)(10), provides:

(a) Every licensed investment adviser shall make and keep true, accurate and current the following books and records relating to such person’s investment advisory business:

(10) All written agreements (or copies thereof) entered into by the investment adviser with any client or otherwise relating to the business of such investment adviser as such.

///

///

7. California Code of Regulations, title 10, section 260.241.4, subdivisions (a) and (e), provide, in relevant part:

(a) Each . . . licensed investment adviser shall, upon any change in the information contained in its application for a certificate (other than financial information contained therein) promptly file an amendment to such application setting forth the changed information.

...
(e) A licensed investment adviser shall file an annual updating amendment, in accordance with the instruction in Form ADV, with IARD in accordance with its procedures for transmission to the Commissioner within ninety (90) days of the end of the investment adviser's fiscal year.

8. The advisory agreements used by Diez and Alii violated Corporations Code section 25238 and California Code of Regulations, title 10, section 260.238, subdivisions (h) and (o), as they did not reflect the services being provided to certain clients. Specifically, the agreements did not reflect that Diez and Alii would be managing client assets on a non-discretionary basis through a securities brokerage, and the agreements claimed that Diez and Alii would provide a financial plan to certain clients, which Diez and Alii failed to do.

9. Diez and Alii violated Corporations Code section 25241 and California Code of Regulations, title 10, section 260.241.3, subdivision (a)(10), by failing to make and keep true, accurate, and current written agreements with all clients.

10. Diez and Alii violated Corporations Code section 25241 and California Code of Regulations, title 10, section 260.241.4, subdivisions (a) and (e), by repeatedly failing to file annual amendments to update Part 2 of Form ADV for the years 2009 through 2013. Further, Diez and Alii failed to implement the new Part 2 brochure format after the new format became required. Even after being advised by the Department in writing that Diez and Alii needed to implement the new Part 2 brochure format, Diez and Alii still updated the Part 2 brochure utilizing the outdated format.

///

///

///

///

1 11. Corporations Code section 25252 authorizes the Commissioner to issue an order
2 levying administrative penalties against any investment adviser for willful violations of any
3 provision of the CSL and any rules promulgated thereunder. Specifically, Corporations Code
4 section 25252 provides, in pertinent part:

5 The Commissioner may, after appropriate notice and opportunity for
6 hearing, by orders, levy administrative penalties as follows:

7 ...
8 (b) Any broker-dealer or investment adviser that willfully violates any
9 provision of this division to which it is subject, or that willfully
10 violates any rule or order adopted or issued pursuant to this division
11 and to which it is subject, is liable for administrative penalties of not
12 more than five thousand dollars (\$5,000) for the first violation, not
13 more than ten thousand dollars (\$10,000) for the second violation, and
14 not more than fifteen thousand dollars (\$15,000) for each subsequent
15 violation.

16 12. By reason of the foregoing, Diez and Alii willfully violated Corporations Code
17 sections 25238 and 25241, and California Code of Regulations, title 10, sections 260.238,
18 subdivisions (h) and (o), 260.241.3, subdivision (a)(10), and 260.241.4, subdivisions (a) and (e),
19 justifying the imposition of administrative penalties. Diez and Alii, by obtaining their investment
20 advisory license certificate, were obligated to have knowledge of, and to comply with, the provisions
21 of the CSL and the regulations thereunder to maintain their investment adviser certificate.
22 Furthermore, the Department had given Diez and Alii prior notice of the requirements of
23 Corporations Code section 25241 and California Code of Regulations, title 10, section 260.241.4,
24 subdivisions (a) and (e). Diez and Alii have continued to violate this regulation, despite the
25 Department's notification.

26 13. Therefore, pursuant to Corporations Code section 25252, the Commissioner seeks
27 administrative penalties for Diez and Alii's willful violation of Corporations Code sections 25238
28 and 25241, and California Code of Regulations, title 10, sections 260.238, subdivisions (h) and (o),
260.241.3, subdivision (a)(10), and 260.241.4, subdivisions (a) and (e).

///

///

///

1 WHEREFORE, good cause showing, and pursuant to Corporations Code section 25252, the
2 Commissioner of Business Oversight prays for an order levying administrative penalties in the total
3 amount of \$15,000.00, for repeat and existing violations of the Corporations Code and the California
4 Code of Regulations.

5 Dated: February 7, 2017
6 Sacramento, California

JAN LYNN OWEN
Commissioner of Business Oversight

7
8 By: _____
9 JOANNE ROSS
10 Senior Counsel
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28